AN ADDRESS

DELIVERED BEFORE

HER MAJESTY'S ATTORNEY AND SOLICITOR GENERALS,

IN CONSEQUENCE OF

A REFERENCE FROM THE CROWN

AS TO

THE RIGHT OF THE ELDEST SONS

OF

THE BARONETS OF SCOTLAND & NOVA SCOTIA

(BEING OF AGE)

TO CLAIM AND RECEIVE

THE DIGNITY OF KNIGHTHOOD.

BY R. BROUN, ESQ.

HON. SECRETARY OF THE ORDER.

LONDON:

JOHN MORTIMER, WIGMORE STREET,

CAVENDISH SQUARE.

1840.

New Works Published

BY

Mr. MORTIMER, Wigmore Street, Cavendish Square.

Dignity, Precedence, &c., of the Baronetesses of the Realm; with an exposition of the Temporal degrees of British Dignity, hereditary and personal; a Series Ordinum shewing the relative value of British and Foreign Titles of Honour, and an exact Table of Precedency of Men and Women.

An Address before the Committee of Baronets on the subject of the Chartered Rights and Privileges of the Order, by W. CRAWFORD, Esq., Barrister at Law, Standing Counsel of the Order.

TO THE BARONETS OF SCOTLAND AND NOVA SCOTIA.

"Est aliquid clarus magnorum splendor avorum,
Illud posteritas æmula calcar habet."

Most Noble and Right Honourable Sirs,

When King James the Sixth (afterwards the first British Monarch of the House of Stuart, and the Founder of the Baronetage,) was baptized on the 17th December, 1566, he was publicly proclaimed "Prince and Steward of Scotland, Duke of Rothsay, Earl of Carrick, Lord of the Isles, and Baron of Renfrew." These were his several styles of honour, and each of them were titles of high hereditary dignity. In that day of the world, the grades of Marquess and Viscount were not known in the Scottish Monarchy; but the Nobility of the Realm—THE PROCERES REGNI SCOTIÆ—were the Barons, the Lords, and the Earls. What the precise number of Barons was in 1566 I cannot say, but from the "Union Roll" it appears that there were then (1566) only fifteen Lords, fourteen Earls, and one Duke, viz.—the infant Prince.*

These three degrees of high nobility had each hereditary seat and voice in the Great Council of the Nation; but—inferior to them in dignity—there were other Nobles who had also seat and voice in that pre-eminent Assembly. This appears from the Parliament of King Robert I., which was held "Comitibus, Baronibus, et aliis Magnatibus;" which proves, says Sir George Mackenzie (Lord Advocate of Scotland, tem. Ca. II.) in his *Science of Heraldry*, that there were Magnates *infra* Barones. These were the Freeholders and lesser Nobles, who held their lands, per militare servitium, and sub-feudation.

There was no distinction between Barons and Lords in Scotland till about the year 1427, when it was enacted that the former should be excused from personal attendance in Parliament, and be allowed in each Shire to send two of their number to represent them.† But in 1560 the Barons resumed their privilege of personal attendance, because in the Parliament of that year the "Causes of true religion and commonwell of the Realm were to be settled, ordered, and established;"—and in 1562, and later Parliaments, we find, says the same great authority, that "Noblemen and Burgesses were summoned, but no Barons—the Barons and Noblemen being then promiscously represented." Further, "In our old original Acts of

* The state of the Peerage in England, in 1603, when King James I. succeeded to the throne, was one Marquess, sixteen Earls, two Viscounts, and forty Barons.

† There was however no Law barring their attendance in greater numbers.

Parliament," he continues, "I find our Lords and Barons were put in one column undistinguished, and under the common name of Barons."

Thus up to the period of the succession of King James the Sixth to the Throne of England, the Barons of Scotland occupied a position equivalent to that now held by our Earls in the present reign, because they were then what Earls are now, the *third* degree in hereditary place and dignity from the Sovereign.

Between the Barons and the Lords there was a degree of Nobility not hereditary, of a very distinguished character, viz.—BANNERETS. They had rank above "The most noble and most ancient knightly Order of the Thistle." They had seat and voice in Parliament by special summons from the Crown; they carried, in common with the Lords and Barons, supported Arms, and when neither of these lordly ranks wore a coronet, they shared with the Dukes and Earls in the then princely prerogative, of wearing a coronet jemmed with three pearls.*

Twenty-two years after the accession of the House of Stuart to the British Throne, to advance the most magnificent undertaking which ever engaged the attention of the Scottish Nation, viz.—the PLANTATION OF NOVA SCOTIA, King Charles the First introduced into Scotland that order of high hereditary dignity of which you are members. The worth of the title of Baronet in 1625, the date of its erection in Scotland, will be at once understood when I mention that it conferred hereditary place and state next to the Lords, and above all Bannerets, such only excepted as should thereafter be created on a stricken field under the Royal Standard, by the Sovereign in person—and not otherwise.

In the reign of James the First, when plebeians, on account of any distinguished service, obtained marks of favour from the Sovereign, they were given armorial ensigns, with letters-patent making them noble—the operative words in their patents being "Nobilitamus, et facimus ipsos Nobiles." The King could not make a gentleman†—quia nobilitas nativa est potior quam dativa—but the grandsons of such persons were gentlemen by blood. If however some very extraordinary kind of public merit required a higher mark of honour than being made noble, they were created Esquires, next Bachelors, and subsequently Knights. In that day it was as irregular and unprecedented to make a plebeian a Knight, without

* Sir George Mackenzie, Lord Advocate of Scotland, Reg. Ca. II.

† A Peer is now commonly called a *nobleman* when spoken of, but in the seventeenth century a Peer would have considered it derogatory to be called a nobleman, because the King could make any scullion a nobleman, by merely giving him a patent of arms. *Gentleman* was the title which both the Peers and the Sovereign took in these times. About a month before King Charles I. quitted Oxford, he addressed a Letter to Lord Digby, in which the following characteristic passage occurs:—"I desire you," says the high-minded Monarch, "to assure all my friends that if I cannot live *as a King* I shall die *as a Gentleman*, without doing that which may make honest men blush for me." Again, one of the regicides, speaking of King Charles I., declared—"If we are again to have a King, I would as soon have the last *Gentleman* as any Sovereign on record."

passing through the intermediate gradations of rank mentioned, as it is now to make a Baron a Duke, without passing through the grades of Earl and Marquess. Neither was any one created a Lord in Scotland who was not previously of knightly, baronial, and banneretial dignity. This is established by the formula of investiture, which was observed anciently with great solemnity; the styles and titles of the recipient being proclaimed by the Lord Lyon King of Arms, as follows:—"Sir A—— B——, of C——, Knight, Baron, Banneret, Lord of our Sovereign Lord's Parliament, Lord of D——."

The BARONETAGE of Scotland then by its constitution, confers in our ancient Monarchy the dignity and consideration which I have above adverted to; whilst in Nova Scotia—which is an integral part of the Realm of Scotland—its Members have hereditary seat and voice in the Supreme Legislative Assembly of the Province, they have baronial privileges as ample as ever were enjoyed by the Barons of Scotland in any former reign, and further, as Lords of Regality, they have seigneurial jurisdiction, as the name implies, equivalent almost to sovereign powers.

The first individual admitted into the Scottish branch of the BARONETAGE, was Sir Robert Gordon, Vice-chamberlain of Scotland, and a second son of the Eleventh Earl of the most noble and princely House of Sutherland; and into it, by the conditions of the Order, no one was admissible who was not descended at the least of a grandfather, and that by the paternal side, who bore arms,—*i. e.* who were GENTLEMEN OF BLOOD—who did not possess a clear landed rental of £1000. per annum, (a sum in the beginning of the 17th century equal to five or six times that amount at the present time), and who otherwise for their quality, state of living, and good reputation, were worthy of it. That these conditions were not nominal, will be disputed by no one who knows any thing of the family history of Scotland; such as do not, will understand the ancestral rank and quality of those who were made Baronets, when I mention that the representative of a house, which was sufficiently honourable in the 14th century to give a Queen to Scotland—Mure of Rowellan—was created a Baronet in the 17th century; that the now premier Ducal House of Scotland, is only a cadet of the present Baronet of Silverton Hill,* and that of our existing Scottish nobles, one Duke, five Marquesses, seventeen Earls, one Viscount, and nine Lords, were Baronets long before they received their higher, but junior, titles of honour.†

* The present Sir Frederick Hamilton, Bart., of Silverton Hill, has in his possession an acknowledgment from the ducal house of Hamilton that his family is the Chief of the name.

† The Edinburgh Almanac for this year, states that the Peerage of Scotland at present consists of eighty-three Members, viz.—7 Dukes, 4 Marquesses, 42 Earls, 6 Viscounts, and 24 Barons. But to the Roll (which includes 34 Baronets) ought to be added all such Baronets and Barons as hold their lands in free barony, with seat and voice in Parliament. This would add to the Roll nearly all the Baronets, and a great many Chiefs of Clans, and heads of ancient families.

Such then was the original position of the Order wherewith your progenitors were dignified in the 17th century—but now, not to look beyond the last ten years, we have witnessed to the great degradation of the BARONETAGE, the injury of the knightly degrees, and of all the noble and ancient families of the three Kingdoms, (many of them representing baronial, chieftain, vavasorial, and knightly Houses,) who now take the title of Esquire, various shopkeepers, brewers, tallow-chandlers, upholsterers &c., created *per saltem* Baronets, with just about as much propriety as it would be in the army to make a corporal *per saltem*, a major general. During the same time, we have seen the Monarch subjected to the personal indignity of not being able to fulfil a promise made to the Ulster Baronets in the presence of his Court on receiving their Petition in 1835, viz. to grant them a Riband and Badge, and although he had issued his commands to the Officers of Arms to prepare designs for the same. And further, at the late Coronation under the shuffling pretext of its occasioning very great embarrassment, we have seen the Earl Marshal trample under foot the Petition of a Body next in hereditary rank, and not second in social importance, to the PEERAGE of the Realm, that *four* at least of their number, to represent the Baronets of the several creations, might in accordance with the compact between the Crown and our Ancestors, tender that homage to our youthful and beloved Queen which at that great national solemnity became Her state, and the loyalty, honour, and duty of the Order.

Under these aggravated circumstances of disrespect to the Monarch, and wrong to the Baronets, I considered it proper, as having been instrumental to raising the proceedings which are now in progress for the restoration of the BARONETAGE to the original excellence of its position, to assert in my own person such rights as are vested by law in the Eldest Sons of the members of the Order. With that view, I presented on the 20th of July 1836, a formal application to the Lord Chamberlain, to present me to his late Majesty for Knighthood, and it was only on the 28th of April 1838, —and after I had communicated to the late Secretary of State for the Home Department, my impression that I felt satisfied no man otherwise situated than he was, durst in this free community, have acted towards another with the remissness and inattention which I had experienced—that at length after twenty-one months delay, I obtained that final, and in my view of the matter, treasonable communication, which you will find at full length in my annexed Address before the Law Officers of the Crown.

The Government last year having refused the Petition of the Baronets, for a hearing before the Queen in Council, on their right, and the right of their Eldest Sons when of age, to present themselves to the Sovereign for Knighthood, I have deemed it advisable, at this stage of my Case, to bring these proceedings under your

attention, to the end that I may have the combined force of the entire BARONETAGE of the three Kingdoms to aid me in that stringent and effective course of procedure, which a due sense of loyalty to the Crown, and duty to the Order, will compel me to follow out, should this late reference not lead to an early and satisfactory settlement of the question.

It is just possible amid the too general declension from the high monarchical principle of the olden times, that there may be a feeling in the minds of some individual Members of the Order, that Knighthood, in its present degraded state, would add no consideration to the BARONETAGE. But that Baronet knows little the temper of my blood, who shall conceive that I, who may one day stand at the head of the oldest branch of a race, which in the United Kingdom has produced twenty families* who have received hereditary titles of high nobility, would ever consent to receive a personal dignity which would place me on a level with the Jews, apothecaries, and plebeians, who have been Knighted in latter reigns. The dignity which I claim at the hands of the Sovereign is not the debased degree of Bachelor—but the eminent honour of Eques Auratus, with the consideration, titular style, heraldic ensigns, personal decorations, and other immunities thereunto belonging. That ancient and renowned chivalrous honour is next in place and estimation to the ORDER OF THE THISTLE, and it must ever be as free as that most noble fraternity, from an admixture of vile materials, since no one can find admission into it except Baronets, and their Eldest Sons, or Heirs-apparent.

But, finally, the issue of this Claim involves others of an immensely more important nature. It has been preferred by me only preparatory to the adoption of proceedings for the revival of those territorial, commercial, and other rights which are vested in the Baronets of Scotland and Nova Scotia by the constituent charters of the Order. Since the period of the Union, no subject of the Scottish Crown has ever attempted to concentrate the national attention upon a matter so grave, so weighty, and so paramount in all in its bearings as that which will flow from the settlement of this point. When that is effected, I shall then make it instrumental to opening up to my compatriots in Scotland and Nova Scotia those now dormant but indefeasable rights, that are vested in both, by the Charters of the Royal Founder of the BARONETAGE —and by the revival of which the latter country will become the impregnable bulwark of British supremacy in the Western World, and the former, the emporium of a trade and commerce which will give a commanding impulse to her industry and enterprise to the end of time. Republican America is now preparing to take up a hostile position upon the ancient boundary of our Kingdom—

* I believe no other race in the British Empire can make a similar boast.

the integrity of the Scottish realm is at stake. Our Nova Scotian Brethren, attached to us by blood, political feeling, religious ties, and national sympathies, invite us to tenant our fertile but now unproductive grants, and to erect upon their confines a living rampart against external aggression and democratic influences, by peopling them with the religious, the loyal, and the brave Clansmen of Scotland. This, too, they do at a moment when the scenes of appalling wretchedness and misery existing in the Western Highlands baffles conception and defies description. In the island of Tiree, densely peopled, the inhabitants lately met, half famished, under the canopy of heaven, and in the presence of a bounteous Creator, entered into a solemn resolution to restrict themselves to *one meal in the twenty-four hours*, and that, bad in quality, small in quantity, and most deficient in nutriment, being of shell-fish. Shall then these things be allowed to continue when millions of acres of our ancestral domains lie uncultivated, and when public virtue, and national honour, alike conspire to revive the objects, and effect the designs, for which our family dignities were granted? Amongst the other distinguishing privileges given to the Baronets, when the Order was ampliated with Knighthood, was the high military post of honour, to surround the ROYAL STANDARD for the defence of the same. How long, under the volcanic aspect of the times, events may not arise to call this privilege into use, no one can be certain. But if, in the interval, the Baronets shall make their Order instrumental to effecting those great patriotic and benevolent ends for which it was devised by its Royal Founder, they may postpone indefinitely civil convulsion within the limits of the parent state, and at the same time permanently plant upon the nacent citadels of that gigantic colonial empire which must ever be the ARX ET DOMICILIUM of British dominion in the western hemisphere, that Regal Banner which, heretofore, whether in peace or war, has floated for 2170 years* over as free, as noble, and as brave a nation as has ever flourished in the course of time.

I have the honour to be,

Most Noble and Right Honourable Sirs,

Your most obedient humble servant,

R. BROUN.

CLARENDON HOTEL,
London, 13th April, 1840.

* King Fergus I., according to our own and foreign historians, "did come into Scotland 330 years before the birth of Christ, and took the Lyon for his Arms, when he did beat the Picts." The double tressure was bestowed by Charlemagne when he entered into a league with Achaius, King of Scots, to shew that the French Lillies should still defend and guard the Scottish Lyon.

RIGHT of the Eldest Sons of the Most Noble and Right Honourable the Baronets of Scotland and Nova Scotia (being of age), to claim and receive the Dignity of Knighthood.

R. Broun, Esq., Hon. Secretary of the Committee of Baronets, having attended Her Majesty's Law Officers, Sir John Campbell, M.P., Attorney-General, and Sir Thomas Wilde, M.P., Solicitor-General, at the chambers of the former in the Temple, London, on Saturday, the 4th of April, 1840, addressed them as follows:—

Mr. Attorney-General and Mr. Solicitor-General:—

The Most Noble and Right Honourable the Marquess of Normanby, Her Majesty's principal Secretary of State for the Home Department, having referred for your legal consideration and opinion a Memorial relative to a claim preferred by me as the Eldest Son of a Baronet of ancient creation, for the dignity of Knighthood, which I placed in his Lordship's hands at an interview at the Home Office, on the 25th of October last, I have the honour to attend you, by his permission, to offer, both on my own account, and on behalf of the Eldest Sons of the Baronets of Scotland and Nova Scotia, such explanations in reference to the said claim as may enable you to understand the grounds on which it rests, and to arrive at such a conclusion upon the prayer of my Memorial as shall be consistent with law and justice.

That document which is now before you, after reciting the Letters Patent, conferring upon all Baronets, and their Eldest Sons, being of age, the right to claim and receive Knighthood, sets forth that in July, 1836, I transmitted in due form an application to the Lord Chamberlain, requesting him to present me to his late Majesty, King William the Fourth, for the honour of Knighthood. It details the various proceedings taken in the Case, in consequence of my application, and its accompanying certificates and documents* having been transmitted to Lord John Russell, then Secretary of State for the Home Department, and by him made the subject of four official references—two to the Officers of Arms, and two also to the Law Officers of the Crown; and, after shewing that, subsequent to these several references, a Petition from the Standing Committee of Baronets, praying that the right of Baronets and their Eldest Sons, being of age, to claim and receive Knighthood, might be judicially considered by the Queen in Council, had been refused, it concludes by a prayer to the effect, that my Case may be reconsidered—my name submitted to the Queen for Knighthood—and the Lord Chamberlain instructed to present me to Her Majesty for that honour.

The instruments upon which the prayer of my Memorial is grounded are twelve in number, and I shall subsequently bring them before you in the order of their dates. Before, however, doing this, I shall claim your attention whilst I analyze the grounds upon which Lord John Russell, late Secretary of State for the Home Department, has interposed between me and the reception of the dignity of

* Amongst other documents, were the legal Opinions of Wm. Crawford, Esq. and Sir Wm. Follett, to the effect that they considered the clauses in the patents erecting the Baronetage, relative to Knighthood, sufficient to warrant the Eldest Son of a Baronet, being of age, to present himself to the Sovereign for Knighthood.

Knighthood, those obstructions which has made this new, and I trust final, reference necessary.

It will be in your recollection, Mr. Attorney-General, that Mr. Crawford, Standing Counsel of the Baronets, attended you, and the then Solicitor-General, Sir Robert M. Rolfe, on the 17th of March, 1838, on my behalf, when my right, in common with the right of the Eldest Sons of all Baronets, being of age, to claim and receive Knighthood was submitted,and the legal force and construction of the Patents fully discussed. Mr. Crawford, I believe, left you, Mr. Attorney-General, and the late Solicitor-General, both satisfied that Knighthood for the Eldest Sons of Baronets, being of age, is a chartered privilege of the Baronetage. I believe, further, that you reported to the late Secretary of State for the Home Department your joint opinion to that effect.* Nevertheless, on the 28th of April following, in reply to a letter expressing my anxiety that my correspondence on this subject should be brought to a close, I received from Mr. Phillipps this communication:—

"Lord John Russell directs me to inform you that he has considered your "claim to the honour of Knighthood. It appears to his Lordship that the "engagement of James the First to confer the honour of Knighthood upon the "Eldest Sons of all Baronets, being of age, is not binding or compulsory upon "the Queen to confer that honour:—Lord John Russell conceives that James "the First, in making such an engagement, did not confer any dignity on the "Eldest Sons of Baronets, but only engaged that his successors should do so; and "that by such an engagement—which was an attempt to give an hereditary "character to the honour of Knighthood not in itself hereditary—he could not "bind his successors.

"It appears to Lord John Russell that it would be very inconvenient to "establish as a rule, that an honour not hereditary should be conferred otherwise "than at the pleasure, and by the favour of the reigning Sovereign. His Lord-"ship, therefore, desires me to add, that he must decline submitting your claim "to the honour of Knighthood for the favourable consideration of Her Majesty."

In this conclusion of Lord John Russell, there are several points to which, Mr. Attorney and Mr. Solicitor-General, I shall successively request your attention. And 1st., having considered my claim, he says, it appears to him that the engagement of King James the First to confer the honour of Knighthood on the Eldest Sons of all Baronets, being of age, is not binding or compulsory upon the Queen. What his Lordship here calls an engagement not binding or compulsory on the Queen is a solemn covenant as regards the Ulster Baronets between King James the First, acting for himself, his heirs, and successors, and them and their heirs-male for ever, by letters-patent under the great seals of England and Ireland. Whilst as regards the Nova Scotia Baronets the same covenant and grant is made under the great seal of Scotland, between them and King Charles the First—and has twice been ratified and allowed by acts of the supreme Legislature of that Kingdom, the Sovereign himself, on the latter occasion, being personally present. Upon what grounds then a legal compact such as this, between the Crown and the subject, which has been recognized and acted upon by all preceding governments from the date of the ampliation of the Baronetage with Knighthood in 1612, down to the present instance, can be considered in the light of an engagement not binding or compulsory on the Queen I cannot comprehend. As a general rule in law, I presume it will not be denied by you, that the Crown, acting by the advice of the Privy Council, and with the consent of the supreme Legislature, can bind its heirs and successors. If King James the First, to consolidate the power, to unite the interests, and to advance the common-weal of his English, Scottish,

* I applied to Lord John Russell for a copy of the Report made on my Claim by the Law Officers, after hearing Mr. Crawford on my behalf, but was refused one.

and Irish subjects, could erect a new order of high nobility in his dominions enjoying conjoint baronial and knightly honours, and make the same, under certain conditions, heritable for ever in the families of those admitted into, and vested with it, then, as a matter of course, it follows that the same must be binding and compulsory on his heirs and successors. By the ancient laws and custom of the monarchy, the Sovereign is the absolute fountain of honours, and arbiter in matters of dignity—and as such, had the Founder of the Baronetage, by the spontaneous exercise of his unlimited kingly power, and regal prerogative, conferred on its members, for himself, his heirs, and successors, the privileges in question, it would of itself have been binding and compulsory upon them. And why? because this exclusive privilege to the Baronets and their Eldest Sons, being of age, does not in any respect limit, or infringe upon, the discretionary power of his successors to confer knightly honours upon any other well-deserving person or persons—nor is it an unconstitutional stretch of the prerogative, inasmuch as feudal knightly honours, from the foundation of the monarchy, have been peculiar to the degree of the subject, of which the Baronetage was originally and exclusively composed. But in addition to the act of the Monarch, it was also the act of the Privy Council, and the act of the Legislature. No Secretary of State, therefore, for the time being, is warranted to consider this solemn grant and compact in the light of an engagement which is not binding or compulsory upon the Queen; because, by her coronation oaths, Her Majesty is held and obliged to administer the laws of the realm to all classes of her subjects with justice and fidelity—and because by the rules and constitution of the monarchy, the acts and engagements of her royal predecessors by letters-patent under the great seal, are binding and compulsory upon her.

2nd. Lord John Russell conceives that King James the First, in making such an engagement, did not confer any dignity on the Eldest Sons of Baronets, but only engaged that his Successors should do so. Allowing Lord John Russell to be right in this supposition, what does it amount to? Why just to that for which the Baronets contend, viz.—that King James the First *did engage* that his Successors should confer Knighthood on the Eldest Sons of Baronets, being of age. But Lord John Russell is wholly in error when he holds that King James the First by ampliating the Baronetage with the immunities, pre-eminences, and ornaments of Knighthood, under provisions making the same descendable in the families belonging to it for ever, did not thereby confer any dignity on the Eldest Sons of Baronets. It is a maxim in heraldry, and the laws of honour, that the Eldest Son of every created degree is as of the next degree to his father; whilst by the common usage and courtesy of society the Eldest Sons of such of the degrees of hereditary dignity as enjoy secondary titles, use and enjoy the said secondary titles during the life-time of their fathers. A Baronet then being an hereditary dignitory next in place and degree to a Lord of Parliament, and being also a Knight, his Eldest Son, both by *jus sanguinis* and by the *Curialitas Angliæ*, would have been a Knight from his birth had that title been hereditary. Further, the Baronets and their Eldest Sons being privileged by the constitution of the Order to be ordered and adjudged in all matters touching or concerning their hereditary dignity, as the other degrees of hereditary dignity, and their Eldest Sons, are in such matters ordered and adjudged,—in virtue of the same, Baronets' Eldest Sons would, from their cradle, like the Eldest Sons of Dukes, Marquesses, &c., have taken and enjoyed the secondary title of their fathers had it been an heritable dignity. Knighthood however, not being communicable from father to son, the ordinance of King James the First of 1616 is, of itself, equivalent to a royal recognition of the fact that a Baronet's Eldest Son during his non-age is a Knight *de jure*,—whilst it further provides, in the amplest manner, for his becoming, when he attains majority, a Knight *de facto*. Whether viewed, however, in the former, or in the latter light, the engagement of King James the First places the Eldest Sons of Baronets, as a class of hereditary chivalry in a position not enjoyed by the Eldest Sons of any other degree of the nobility of the realm, whether greater or lesser. On

the same grounds that Lord John Russell conceives that King James the First, by the Royal Ordinances in question, did not confer any dignity on the Eldest Sons of Baronets, he might conceive that the patent of a Duke confers no dignity on his Eldest Son. Titles of honour, however, whether hereditary or personal, both by the laws and custom of this country, and by the laws and custom of every Christian monarchy, confer dignity, place, and precedency on the Eldest Sons of those who enjoy them. The Eldest Son of a Knight Bachelor, our lowest grade of Knighthood, has precedency over all Esquires and Gentlemen, however eminent they may be on account of their lineage, property, office, or influence, in the State. The Eldest Sons of the three highest grades of hereditary dignity have place and precedency before all Barons of Parliament—and the Eldest Sons of Baronets have rank and place correspondent to the elevated position which their fathers enjoy as the sixth degree of high hereditary dignity in the Realm. That rank and place, however, is now unduly abated ten degrees* in the table of precedency in consequence of Baronets' Eldest Sons not claiming and receiving Knighthood—whilst from this circumstance, and the fact that the Baronets and their Eldest Sons have allowed several of their other chartered rights and privileges to fall into desuetude, the Baronetage has sunk into a state of decadence disrespectful to the intentions of its Royal Founder—injurious to the other classes of the Aristocracy, whose position in society is regulated by it†—and inconsistent with the place which the British Nation holds amongst the free dynasties of the world.

King James the First by ampliating the Baronetage with the pre-eminences, the privileges, and the ornaments of Knighthood, certainly placed it, to use the words of an ancient heraldic writer, on "ane unparalleled foundation"—but still it was a foundation to which the Baronets had a just ancestral claim, and fair, legitimate, and direct pretensions. The families in England and Ireland that received this dignity during the course of the seventeenth century had from time immemorial formed the first grade of the hereditary chivalry of their respective nations. They were the representatives of the thanes, valvasors, lords of manors, and military tenants of the Crown, who in various reigns had formed the first rank of

* In the Table of Precedency, published in the last edition of Lodge's Peerage, the ranking is as follows:—

Baronets
Bannerets not made by the Sovereign in person
Knights Grand Crosses of the Bath
Knights Commanders of the Bath
Knights Commanders of St. Michael and St. George
Knights Bachelors
Companions of the Bath
Cavalieri and Companions of St. Michael
Masters in Chancery
Doctors, Deans
Serjeants at Law
Eldest Sons of the Younger Sons of Peers
Baronets' Eldest Sons

Whereas Baronets' Eldest Sons if created Knights (Equites Aurati) would rank with Commanders of the Bath—Equites Balnei and Equites Aurati being the same Order of Knighthood in the reign of King James the First.

† The position of a Baronet regulates the consideration of the other degrees, both above and below him in the scale of precedence. The late work of Prince Puckler Muskau on "England and the English" has given currency to the supposition throughout the Continent, that none but Peers are noble, and that a Baronet has no rank in his own country. Hence all British Esquires and Gentlemen, however noble or ancient their descent, are considered as plebeians—whilst our Lord Barons of Parliament and Viscounts are equally depreciated by being classed with their titular Counts and Barons of lesser nobility. One never hears now at any Foreign Court a British Peer receive the title *Monseigneur*, which is his right. Even an Earl, a princely dignity, is called *Monsieur*, as if he were a mere titular Count. No one ever dreams of calling him *Erlaucht*, the title always given to the Counts of the Empire. In the reign of King Charles the First, the Cardinal Richelieu addressed a letter to *Monsieur* instead of to *Monseigneur*, le Duc de Buckingham. The Duke retorted the slight, and the affair was on the point of leading to serious consequences, when the Cardinal yielded it with a joke, saying "the Cannons of the British Navy are more powerful than the Canons of the Church."

the gentry or lesser nobility—a rank equivalent to the first grade of the continental lesser nobility, whether known by the titular styles of Barons, Comtes, Graffs, or Marcheses; and from generation to generation their Eldest Sons had not only enjoyed the privilege of claiming and receiving Knightly honours, but actually in default of their doing so they were subject to fines. As regards that branch of the Baronetage to which I more immediately belong, the families composing it (about 160 in number) were a component part of the nobility of Scotland from the earliest ages, for almost without exception they were of baronial or lordly rank, with seat and voice in the Great Council of the nation. For myself I can justly say that my ancestors as Tenants of the Crown *in capite*, Free Barons of Parliament, Lords of Regality, and Chiefs of their name and race, had place and degree amongst the ancient and high nobles of Scotland, for upwards of five centuries and a half before the reign in which their representative was raised to the Baronetage.* During that period they had rank and quality amongst the Magnates and Proceres Regni Scotiæ,†—and such also in general was the original position of all those who were admitted into the Scottish branch of the Order. Of these families it can be truly said that they were præ-nobiles and semper-nobiles—and both on my own account therefore, and on behalf of the Eldest Sons of the Baronets of Scotland and Nova Scotia, whose natitial position, by blood and prescription, no Sovereign or Government can now abate, I take this opportunity to declare that we never will abandon our just and lawful pretension to be held and considered as the first rank of the feudal chivalry of the Scottish Nation, or tolerate any official obstructions that may be thrown in the way of our practical enjoyment of the same. That rank is vested in us by tenure—by the royal patents of former Monarchs of our country—by the acts of its supreme Legislature—and by the common consent of our compatriots. It is an unalienable heritage which we alone enjoy of the various grades forming the Eldest Sons of the high aristocracy of our ancient monarchy. The distinctions which it confers are superior to those enjoyed by the Eldest Sons of our Dukes, Marquesses, Earls, Viscounts, and Lords of Parliament—for whereas they only have secondary titles by courtesy, we (whose fathers are Knights, Free Barons of Parliament, Lords of Regality, and Baronets,) have the dignity of Knighthood (Eques Auratus) by creation. The former being a mere titular appellation, the latter a vested personal dignity carrying with it privileges, and pre-eminences, of the most distinguished and honourable description. Further by the possession of this dignity we stand between such Free Barons of Scotland as are not Baronets, and the Knight Bachelors, Esquires, and Gentlemen, who form the gentry or lesser nobility of that Realm, and separate them from the greater nobility, of whom our fathers as Baronets of Scotland, and Nova Scotia, and hereditary Councillors of the Sovereign in both countries, are a constituent part and portion. Nor is this all—in virtue

* My ancestor, Walterus le Broun, was one of the witnesses to the Inquisition, made by Prince David, respecting the possessions of the See of Glasgow, in 1116, the oldest Scottish document now extant. Of the other witnesses the following representatives alone remain, viz.—

Witnesses.	*Representatives.*
The Countess Matilda, afterwards Queen	Her Majesty Queen Victoria.
Cospatricius filius Alden, ancestor of the Dunbars, Earls of March, &c.	Sir William Rowe Dunbar, Bart. chief of his name.
Uchtred filius Scot	Sir Hugh Scott, Bart., Lord Baron Polwarth, chief of the name of Scott.
Maccus filius Undneyn	Sir John Maxwell, Bart. of Nether Pollock, chief of his name.
Gervasius Riddel	Sir Walter B. Riddell, Bart. chief of his name.
Alanus de Perci	His Grace the Duke of Northumberland.

† Sir George Mackenzie, Lord Advocate of Scotland, tem. Ch. II., in his Science of Heraldry, chapter on Precedency, says "Nothing can be clearer, or more evident than that in these early times we are upon (viz. the 12th century) the family of the Riddell's must have been considered in the rank and quality of the *Magnates* and the *Proceres Regni Scotiæ*."

of our knightly degree, we enjoy in common with our fathers an augmentation of honour in our coats armorial—and are entitled to wear those exterior ensigns, and other habits and ornaments, which by former use and practice belong to this ancient and splendid Chivalrous Order. So far therefore from the conclusion of Lord John Russell being correct, that the engagement of King James the First did not confer any dignity on the Eldest Sons of Baronets, —that engagement actually raised them to a position of the most elevated and distinctive character, such as the Eldest Sons of no other class or degree of nobility in Christendom possess,—and it is one accordingly which the Eldest Sons of the Baronets—whether Scottish, English, or Irish—will never consent to yield up, or to have taken from them. Indeed this right can neither be yielded up or taken away. It is one which is indefeasable in the Order for ever, and cannot be abrogated without shaking the foundation on which all honours and titles in the Monarchy rest, whether regal, peerage, knightly, or gentilitial.

It will perhaps be contended that knightly dignity is not vested in the Baronetage—but that the Baronets have only, like their Eldest Sons, the privilege of claiming and receiving Knighthood. This, as regards the Baronets of Scotland and Nova Scotia, I deny. Knighthood, being a personal honour, is in general obtained from the sword of the Sovereign. But at all times since the mode of conferring titles by patent was introduced, Knighthood has occasionally been so dispensed—and at present there are Knights by patent to be found in every quarter of the British dominions. By the Royal ordinance of 1612, King James the First did not promise to Knight, but he actually *did Knight*, all the Baronets then created who had not previously received that honour, stipulating that such as thereafter should be no Knights, on due application should receive the same. An English Baronet therefore who has not received Knighthood during the life of his father may, on succeeding to his family honours, present himself to the Sovereign for Knighthood. But the Baronets of Scotland and Nova Scotia, have a position preferable to the English Baronets in this respect. They, by their original patents, are both Knights and Baronets, and do not require the accolade from the Sovereign. The patent of my ancestor creates him, and his heirs-male for ever, Knights, just as much as it creates him and them for ever Baronets; and under that instrument my father, although he has never received the accolade, is a Knight by patent, and also a Baronet by patent. This is the case with all the other Baronets of Scotland and Nova Scotia. I hold therefore that I, and the Eldest Sons of all Scottish Baronets, are during the life-time of our fathers, Knights *de jure*, by blood—and that on succeeding to our family honours, we become Knights *de facto*, by patent. During however the life-time of our fathers, we have the special and peculiar privilege of presenting ourselves to the Sovereign for Knighthood, and that honour the Sovereign is bound by the covenants and premises of the Royal Founder of the Baronetage to confer upon us.

3rdly. Lord John Russell says that by such an engagement—which was an attempt to give an hereditary character to the honour of Knighthood not in itself hereditary—King James the First could not bind his successors. In this position there are two fallacies, upon each of which I shall make a few comments. First, King James by giving to Baronets' Eldest Sons the right to present themselves for Knighthood, being of age, did not attempt to give an hereditary character to the honour of Knighthood. Had His Majesty, as the fountain of honours in his Kingdom, granted and ordained that the Eldest Sons of all Baronets from their birth, *should be Knights*, he would have done that which Lord John Russell says he attempted to do, viz. given an hereditary character to Knighthood in the families of the Baronetage;—and further, had he done so, he would not simply have exercised his lawful prerogative, but he would actually have followed the precedent of Ireland, where *hereditary* Knighthood, in certain families, has always prevailed, and the precedent of Germany, where an hereditary Reichs-ritterschaft, or Ordo Equestris, has immemorially existed. But King James the First did not grant that the Eldest Sons of Baronets shall be

Knights by birth,—neither, that they shall be Knights during their minority—neither, that they shall be Knights at all, during the life-time of their fathers, unless they desire to receive the same according to the mode pointed out in his letters-patent—there is an *application* to be made, and an *act* to be done. What he gave them is this, the privilege of claiming and receiving Knighthood, being of age. The claim is an hereditary privilege in the families of the Baronets—the conferring is an hereditary prerogative of the Sovereign—but the dignity of Knighthood itself is not hereditary. A Baronet of Scotland and Nova Scotia is a Knight by patent—and may or may not, as he thinks proper, receive that honour from the sword of the Sovereign—but during his life-time his Eldest Son is not a Knight by patent—but is only entitled to present himself for that honour—the privilege being a flower of his father's nobility. Second, the allegation of Lord John Russell, that by such an engagement King James the First could not bind his heirs and successors, is one subversive of all law and justice in the Kingdom. The erection of the Baronetage in England, and its subsequent extension to Ireland and Scotland, was not done unadvisedly. It was a matter which engaged the attention of successive Kings, and successive Governments. The Order was founded in these several Kingdoms not only for the most important state ends—but its honours were bestowed in consideration of the most important personal services, and pecuniary contributions to the public treasury. The engagements of King James the First, and King Charles the First, with the Baronets are therefore legal compacts, and it is no impugning of the discrimination of Lord John Russell to say, that the respective Privy Councils and Law Officers of these Sovereigns were fully competent to decide the point, whether or not they could bind their successors. In the constituent charter of King Charles the First to the Baronets of Scotland and Nova Scotia, it is set forth and provided that, "it is and shall be valid sufficient and effectual in all time coming, in all points thereof to the Baronets and their heirs-male for ever respectively, and to their wives, sons, daughters, and sons' wives, respectively and each of them, in law against himself, his heirs, and his successors, and against all other persons whatsoever in all His Majesty's Courts, and those of his heirs and successors, and in all other places whatsoever, at all times and occasions, notwithstanding whatsoever law, custom, prescription, practice, ordinance, or constitution hitherto made, ordained, or published, or hereafter at whatsoever time to be made, ordained, and published or provided, and notwithstanding any other matter, cause, or reason whatsoever."—Further, His Majesty King Charles the First, in the said Charter, "for himself and his successors wills, discerns, declars and ordaines, that the said Charter with all and sundry its privileges, liberties, clauses, articles, and conditions whatsoever, should be ratified, approved, and confirmed by the Parliament of the Kingdom of Scotland, in order that it might have the strength, force, and effect of a decree and sentence of that supreme and pre-eminent tribunal,"—which accordingly was afterwards done. If therefore the conclusion of Lord John Russell be correct, the patents of the Baronets of Scotland are waste paper—and there is an end to all compacts whether of a public or private nature in the State.

4th. It appears to Lord John Russell that it would be very inconvenient to establish as a rule, that an honour not hereditary should be conferred otherwise than at the pleasure, and by the favour of the reigning Sovereign. I can easily understand why Lord John Russell should be of such an opinion—and I can also conceive that other Ministers of the Crown for the time being might be of opinion that it is very inconvenient that all honours—hereditary and not hereditary—should be held otherwise than at the pleasure, and by the favour, of the reigning Sovereign. But happily, under the free constitution of this country, the subjects have their rights as well as the Sovereign—and these rights are not contingent upon either the pleasure or the favour of the Crown, or its advisers. The reigning Sovereign, by law, has the power to confer titles of honour and dignity—and the Baronets, and their Eldest Sons, by law, have the privilege to ask and receive Knighthood. This privilege and that power equally exist by

law—and neither can be annulled or made inoperative, by any act or proceeding warranted by the constitution of the Kingdom. The question with which therefore as the legal advisers of the Crown, you Mr. Attorney and Mr. Solicitor-General have to deal is, not with what Lord John Russell may consider to be very convenient, or very inconvenient to establish as a rule in this matter, but with that which a former Monarch of this country, aided by his Privy Council, and sanctioned by the supreme Legislature, has considered it fit and proper to establish as a rule. The Baronetage, as I have already said, was originally erected on the most weighty considerations, and for the most important public ends. In recompense of merits approved, of services rendered, and of money paid, King Charles the First, with the consent and approbation of the Estates of his ancient Kingdom of Scotland, gave to the Eldest Sons of the Baronets the privilege in question, promising on the word of a prince, for himself and his successors, that it should be performed. This privilege, which Lord John Russell now deems inconvenient, from the extension of the order to Scotland in 1625 to the present instance, no former Sovereign has withheld, nor has any preceding Secretary of State taken it upon him to challenge. To the proposition, assuming that such a case should arise, that no honour ought to be conferred otherwise than by the pleasure and favour of the reigning Sovereign, I cannot subscribe, because it is an existing, valid, and recognized law of the monarchy, that the particular degree of the subject to which I belong should enjoy the privilege I contend for. But as regards this prerogative of the Crown—(and considering that Knighthood in almost all cases is now conferred by the interference and control of the Government, the privilege of conferring Knighthood on Baronets and their Eldest Sons free from that interference and control, is a very honourable prerogative)—I cannot for a moment conceive it possible that any reigning Sovereign should ever consider its exercise inconvenient. That gracious Monarch who first extended the sceptre of the House of Stuart over those magnificent dominions which constitute the British Empire—and who has transmitted to his heirs and successors the noble heritage of the mightiest Throne in the world, has bound upon them to fulfil all the stipulations, premises, covenants, and grants *whatsoever* which by Charter he has vested in an Order which he erected, "to establish that his people might more and more flourish, not only in the true practice of religion, civil humanity, and probity of manners, but also in the affluence of riches, and the abundance of all things which contribute either to the ornament, or to the happiness of the commonweal." The dignity of Knighthood in particular was superadded to the rights and privileges vested in the Baronets by the original Charter erecting the Order, because, to use the language of the second patent, His Majesty "was not contented with those marks of his royal grace and power which they already enjoyed." From that period down to the present reign, the Baronets have done nothing to forfeit the regard of their Sovereign—nothing to warrant or countenance the supposition that Knighthood, for such of their Eldest Sons as choose to make application for it, would be deemed inconvenient, or be conferred otherwise than at the pleasure, and by the favour, of Her Majesty. It would therefore be a dereliction of all correct and duteous feeling, were I for an instant to entertain the supposition that our gracious Queen—who is not only the pure fountain of probity, honour, and justice to all classes of her faithful subjects, but also the constitutional guardian and protectress of their lawful privileges and rights—will ever in this, or in any other respect, violate the solemn acts and engagements of her royal predecessors; or that the Baronets will experience at her hands, any other treatment than what becomes the paramount ancestral and personal claims which they have upon her crown and the state—and the moral and social position which they enjoy in a nation which their joint services have eminently conduced to render the greatest, the freest, and the happiest in the world.

Lastly, on the premises on which I have severally commented, Lord John Russell comes to the conclusion, that he must decline submitting my claim for the honour of Knighthood for the favourable consideration of the Queen. By

this determination, Lord John Russell refuses only to do that which he was never requested by me to perform—and which, had he done, he would at best have performed irregularly and unofficially. In the Royal Charter conferring the privilege in question, it is distinctly pointed out, that applications for Knighthood by Baronets and their Eldest Sons shall be made to the Lord Chamberlain of the Household, who shall give knowledge of the same to the Sovereign, and afterwards present the applicant for the reception of the honour. This course I strictly followed in making my claim for Knighthood—and I only recognize Lord John Russell in this matter as a person who has gratuitously stept out of his department to intercept my application on its passage to the Sovereign—who has improperly interfered with the official duties of the Lord Chamberlain—and who has committed the personal honour of the Queen, by making it appear that Her Majesty considers herself not bound by that engagement which King Charles the First pledged *his word as a Prince* should be binding on his heirs and successors.

Having thus analyzed the grounds upon which Lord John Russell has thought proper to decline laying my claim for Knighthood favourably before Her Majesty —and the Petition which the Baronets have since presented, praying to be heard before the Queen in Council, in support of this right, having been refused—I have now to request of you, Mr. Attorney and Solicitor-General, as the Law Advisers of the Crown, to dismiss from your minds the impression produced by these past irregular proceedings, whilst I bring under your attention the prayer of the Memorial which the Marquess of Normanby, Secretary of State for the Home Department, has referred for your consideration and opinion, and the grounds upon which it is preferred.

That Memorial, as I have before stated, contains a brief outline of all the steps that have been taken with respect to my claim for Knighthood, since the presentation of my application on the 20th of July, 1836,—and on the premises therein set forth it concludes by praying:—

1st. "That my case may be re-considered by the Secretary of State for the "Home Department, according to justice."

2nd. "That my name may be submitted by him favourably to the Queen for "the honour of Knighthood, pursuant to the compact between King "James the First and the Baronets, which compact has been faithfully "kept and observed by all Her Majesty's royal predecessors." And

3rd. "That the Lord Chamberlain may be instructed by his Lordship to "present me to Her Majesty for Knighthood, as pointed out in the "constitution of the Baronetage, and which has been invariably acted "upon without challenge under all preceding governments from the "erection of the Order in 1611, down to the present reign."

The documents upon which I ground this prayer are twelve in number, and I shall now bring them in the order of their dates before you:—

1st. The ordinance and royal decree of King James the First, of the 28th of May, 1612, which contains the following clauses:—

"First, His Majesty is pleased to Knight the present Baronets that are no "Knights: and doth also by these Presents, of his meer motion and "favour, promise and grant for Him, his Heirs, and Successors, that such "Baronets, and the Heirs-males of their bodies, as hereafter shall be "no Knights, when they attain, or be of the age of one and twenty years, "upon knowledge thereof given to the Lord Chamberlain of the House-"hold, or Vice-Chamberlain for the time being, or in their absence to any "other officer attending upon His Majesty's person, shall be Knighted by "His Majesty, his heirs, and successors."

2nd. The final decree of King James the First, of 1616, as follows:—

"And further of our especial grace, certain knowledge, and meer motion, "We do hereby declare and express our true intent and meaning to have "been, and do hereby promise and grant for Us, our Heirs, and Succes-

" sors, to and with such gentlemen as now be, or at any time hereafter " shall be, Baronets—that so soon as they, or any of them, shall attain to " the age of one-and-twenty years, and likewise so soon as the Eldest Son " or apparent Heir-male of the bodies of them, or any of them, shall " during the life of their father, or grandfather, attain to the age of one- " and-twenty years, and that the said Baronets, or the said Eldest Sons, " or apparent Heirs-male, shall be presented to us by the Lord Chamber- " lain of our Household, or Vice-Chamberlain for the time being, or in " their absence by any other Officer attending upon the person of Us, our " Heirs, or Successors, to be made Knights, that they, and every one of " them, shall, from time to time, be made Knights by Us, our Heirs, and " Successors accordingly."—

" We are further graciously pleased, that as well such as now are, as also such " as at any time hereafter shall be Baronets, and every one of them, shall " and may at all times hereafter have and take Letters-patents under our " Great Seal to the effect of the said former recited Letters-patents, and " of these presents."

3rd. The Letter of King James the First to the Lords of the Privy Council of Scotland, dated from the Court at Royston the 18th day of October, 1624, which contains the following passages:—

" And as We were pleased to erect the honour of Knights Baronets within " this our Kingdom of England for the advancement of the plantation of " Ireland, so We do desire *to confer the like honour* within that our King- " dom of Scotland.—And for the better directing of your judgment, We " have appointed a printed copy of the Order which was taken concern- " ing the Baronets of this our Kingdom (of England) to be sent unto " you, as it was published by authority from us."

4th. The Reply of the Lords of the Privy Council of Scotland of the 23rd of November, 1624, to King James the First, saying that they had considered His Majesty's Letter concerning the Baronets, and that they thereby perceived His Majesty's great affection towards his ancient Kingdom, and his most judicious consideration in making choice of so excellent a means, both noble and fit, for the good of the same.

5th. The Patent of the Senior Baronet of Scotland—Sir Robert Gordon of Gordonstoun, 28th May, 1625, containing the following clause:—

" Moreover, We out of our special grace, favour, certain knowledge, meer " motive, and deliberate mind, by these presents for Us, our Heirs, and " Successors, with advice aforesaid, (viz. of the Privy Council of Scot- " land,) will, grant, ordain, declare, and promise, that at whatsoever time, " and as soon as the Eldest Son, and apparent Heir-male of the said Sir " Robert, or the Eldest Son, or apparent Heir-male of whatsoever Heirs- " male succeeding to him, shall attain the age of twenty-one years, he, " and each of them respectively, shall by us, our Heirs, and Successors, " be inaugurated Knights (Equites Aurati) whensoever they, or any of " them, shall require this Order, without the payment of any fees or " expenses whatsoever."

6th. The Royal Commission of King Charles the First under the Great Seal, 25th July, 1626, to certain of the Lords of the Privy Council of Scotland empowering them to create Baronets, and which contains the following clause, directing and appointing that the said degree, state, order, dignity, name, title, and style, should be granted:—

" With such like privileges, prerogatives, immunities, liberties, and others " whatsoever, which are granted, and to be granted, *in the Charters already* " *passed* * to the Baronets of the said Kingdom made by Us, to be en- " joyed and possessed hereditarily."

* Viz.—to Sir Robert Gordon the Senior Baronet, and to several others created between the date of his Patent and the date of the commission, all which Patents were in the self-same terms, *mutatis mutandis*.

7th. The act of the Parliament of Scotland passed on the 31st of July, 1630, approving and confirming all acts and proceedings relative to the erection of the Order of Baronets in Scotland, as follows:—

"Apud, Holyrood House, ultimo die mensis, Julii, 1630.—The Estates "presently convened, all in one voice, ratifies, allows, approves, and "confirms, the dignity and order of Knights Baronets, erected by His "Majesty, and his late dear father of blessed memory, and conferred by "them on sundry gentlemen of good quality for their better encourage- "ment and retribution of their undertakings in the plantation of New "Scotland, with all the Acts of Secret Council and Proclamations follow- "ing thereupon made for maintaining of the said dignity, place, and "precedency due thereto, to continue and stand in force in all time "coming, and that intimation be made hereof to all His Majesty's lieges "by open proclamation at the Market Cross of Edinburgh, and other "places needful." (Act of Parl., vol. 5, p. 223.)

8th. The Act of the Parliament of Scotland passed on the 28th of June, 1633, His Majesty King Charles the First being personally present, of which the following are clauses:—

"Our Sovereign Lord and Estates of this present Parliament ratifies and "approves the act of the general convention of Estates at Holyrood "House on the last day of July in the year of God 1630, whereby the "said Estates have ratified and approved of the dignities and Order of "Knight Baronet, with all the Acts of Secret Council and Proclamations "following thereupon, made for the maintaining of the said dignity, "place, and precedency thereof."

"And His Majesty and Estates aforesaid will, statute, and ordain, that the "said dignity, title, and Order of Baronets, and all Letters-patent granted "therewith to any persons whatsoever, shall stand and continue in force "with all liberties, privileges, and precedencies thereof, according to the "tenor of the same, *and in as ample manner as if the bodies of the said "Letters-patent were herein particularly engrossed and expressed*, and ordain "intimation to be made thereof by open proclamation to all His Majesty's "lieges at the Market Cross of Edinburgh, and other places needful, "that none pretend ignorance."

9th. The Royal Patent of King James the Second, dated Whitehall, the 16th day of February, 1686, conferring upon Sir Patrick Broun of Colstoun, and his heirs-male for ever, the title and dignity of Knight Baronet, which contains the following clause:—

"Be it known, as by the tenor of these present, that from our certain know- "ledge, meer motion, royal power, and regal prerogative, for us, and our "successors, we give, grant, and confer on the said Patrick Broun of "Colstoun, and his Heirs-male for ever, the title, dignity, order, degree, "and honour of Knight Baronet; we also make, create, and constitute "the said Patrick Broun, and his Heirs-male aforesaid, for ever, Knights "Baronets, ordaining them and their Wives, and their Children re- "spectively, to enjoy and possess the same title, with privileges and "precedence both public and private, after the date of the said Presents, "even as any other Knight Baronet in the said Kingdom, his Wife and "Children ever enjoyed or possessed in times past, or may enjoy or "possess in times future."*

* The Patents of the Baronets, created from the erection of the Order in Scotland, in 1625 to 1637, contained all the rights and privileges of the body ad longum. After 1637, the same rights and privileges were given in general terms. The following is a copy of the Royal Precept or Warrant for passing the Patents of all the Baronets created by King Charles I. subsequent to 1637; with extracts from the Patents of Baronets in latter reigns. These vary in phraseology, but that is of no importance, as they are each referential instruments pointing to the constituent Charters erecting the Baronetage:—

"Præceptum Chartæ fact. per S. D. N. Regem A—— B——, suisque Hæredibus Masculis super statu, gradu, dignitate, nomine, ordine, titulo, et stilo, Baronetti; cum omnibus et singulis,

10th. A certified copy of the Retour to the Court of Chancery in Scotland, of Sir James Broun's special service on the 12th of January 1826, as Heir-male to his cousin Sir Alexander Broun 5th Baronet, before the Honourable the Magistrates of the Royal Burgh of Lochmaben, by a Jury of fifteen Gentlemen of property and station in the County of Dumfries, of which the present Lord Lieutenant, the Marquess of Queensberry, was Chancellor.

11th. A certificate by the Lord Lyon King of Arms, attesting and declaring the lawful lineage of Sir James Broun as above set forth;—with a Pedigree shewing the descent of the Title, and documents in proof of its correctness.

12th. Baptismal certificates from the Minister and Elders of the Parish of Lochmaben that I am the Eldest lawful Son of Sir James Broun, Baronet, and of age.

In addition to those Royal Patents, Acts of Parliament, Certificates, and other documents, I have to add that the Act of Union between the Kingdoms of Scotland and England, which settles the mutual precedency of the MAGNATES utriusque Regni, provides and secures to all classes and degrees of the Scottish subject their ancient personal and private rights and liberties; and that in the Baronetage (comprising its whole Members, English, Irish, and Scottish), from its ampliation with Knighthood in 1612, down to the present reign, there has been a constant and unbroken chain of precedents of Eldest Sons of Baronets, who have asked and received the honour of Knighthood. This privilege, indeed, from the trouble into which the nation fell shortly after it was granted, and the succession of civil commotions which prevailed in Scotland during the course of the last century, has not been much exercised by the Scottish branch of the Order, but my case is the only instance on record of its ever having been asked without being promptly granted. In the history of the House of Sutherland it is stated, that the Lairds of Cluny and Lesmoir were created Baronets in 1625, and that "James Gordon, Lesmoir's Eldest Son, was Knighted according to the tenor of his father's patent." When King Charles the First visited Scotland in

prærogativis, privilegiis, precedentiis, conditionibus, aliisque, ad dict. statum, gradum, dignitatem, nomen, ordinem, titulum, ac stilum, Baronetti, pertinen; cum prioritate et præcedentia ante omnes Equites Auratos vulgo knights; Milites Bauchallaros, anglice Batchelors; Barones minores vulgo Lairds; et ante omnes Armigeros vulgo Esquires; et Generosos, Gentlemen appellat; except. Locum Tenent. S. D. N. Regis, suisque Hæred. Masculis. Et quod Nati et Natæ dicti A— B— habebunt præcedentiam ante natos et natas omnium personarum antequos dictus A— B—, suique Hæredes Masculi, locum et præcedentiam sumere possunt. Quodque Filius natu-maximus, vel apparens Hæres Masculus, dicti A— B— aetatem viginti et unius annorum, ac ingente, EQUITES AURATI creabuntur, quandocunque aliquis eorum desiderabit, absque ullis sumptibus. Et quod dictus A— B—, suique antedict. armua Novæ Scotiæ portabunt. Et quod dictus A— B— appellabitur *Dominus* A— B— *Miles Baronettus*; et ejus uxor *Lady, Madame* et *Dame*, cum quibusdam aliis privilegiis et conditionibus in dicto præcepto content. Apud Stirling secundo die mensis Martii anno Domini millesimo sexcentesimo trigesimo octavo, et regni nostri anno decimo tertio."

"Per Signetum."

Extracts from Patents:—

"We, Charles II., &c.— give, grant, and confer on A—— B——, and the Heirs-male of his body, the title, honour, precedence, and dignity of Knight Baronet; with all the privileges, liberties, immunities, and advantages thereunto belonging; *with no less liberty and extent of right in all respects*, than any other Knight Baronet of our foresaid Kingdom of Scotland, at whatsoever time past they have obtained or enjoyed, and still possess, and enjoy, a similar title and dignity, or at any future period can, or may obtain, possess, or enjoy it," &c.—(Cockburn of that Ilk, 1671.)

"Jacobus II. Dei Gratia, &c. Constituimus et creamus præfatum A—— B—— ac Hæredes masculos, Milites Baronettos in perpetuum, cum singulis aliis privilegiis, immunitatibus, et honoribus, quibuscunque eo spectant. aut quæ per quascunque Leges, Statuta, Consuetudines, Commissiones, aut Constitutiones quasvis in Dominiis hisce nostris eo spectare dignoscuntur, uti, potiri, et gaudere Ordinamus," &c.—(Stewart of Barrow, 1687.)

"Gulielmus et Maria Rex et Regina, &c. Damus, concedimus, et conferimus in dictum, A—— B—— et Heredes Masculos de ejus corpore, titulum, dignitatem, gradum, et honorem Militis Baronetti, atque adeo illum et illos, eodem titulo frui et gaudere, Ordinamus cum præcedentia tota aliisque privilegiis, et immunitatibus, Militibus Baronettis, virtute quorumcunque Actorum, Statutorum, Diplomatum, seu Consuetudinum in Dominus nostris debitis."—(Dunbar of Mochrum, 1694.)

1633, he conferred the honour of Knighthood on a considerable number of persons, several of whom were the Eldest Sons of Baronets. In 1645 I have found mention of Sir Philip Nisbet, Eldest Son of Sir Alexander Nisbet, Bart. I have seen in the hands of Sir William Betham, Ulster King of Arms, three MSS. volumes of copies of "Scottish Orders in Council, from 1626 to 1640." These volumes contain a great many letters relative to the Baronets of Scotland and Nova Scotia, and in especial two from King Charles the First, addressed to the Lord Chancellor, one in 1626, and the other dated the 10th of May, 1636, desiring him to Knight the Eldest Sons of all the Baronets. In all the old works on Scottish Heraldry and Precedence, the right of Baronets' Eldest Sons to ask and receive Knighthood is set forth, and from time to time the names of Baronets' Eldest Sons occur who claimed and obtained that honour. Sir George Mackenzie, who was Lord Advocate of Scotland during the reign of King Charles the Second, in his *Science of Heraldry* distinctly recognizes this privilege. Nisbet, who wrote in the beginning of the last century, under the patronage of the Parliament of Scotland, and in dependance on a public pecuniary aid granted by it, says, "the Eldest Sons of all Baronets are ordered at the age of twenty-one years to be by His Majesty first created or dubbed Equites Aurati before they take the title of Baronet, *yet this they now very often neglect to do*, which is certainly an error." This latter observation shews that the practice was not uncommon in his time; and Markham, speaking of this special grant, constituting the Eldest Sons of Baronets *in perpetuum* Knights, after attaining majority, calls it "ane unparalleled foundation, for whereas all other Orders and honours of Knighthood doe ever end with him who enjoy them, this phœnix is eternall, the sinders in his seid keiping the honour alyve to the last generation—for though no man was ever in this world borne a Knight, yet may the Eldest Son of a Baronet say from his swaddling clothes, '*If I live to be of aige, I must be a Knight.*'" In the Letters Patent of all the Baronets created from the Union until the 19th of December, 1827, there is a special clause setting forth that immediately after the passing of the said patents, the King would create and make them Knights, and that he, his heirs, and successors, would also make their Eldest Sons Knights, so soon as they should attain or be of the age of twenty-one years, provided they wished it. Finally, when His Majesty King George the Fourth, of the date above mentioned, ordered and declared that this covenant should not in future be inserted in the Patents of those who should *thereafter* be created Baronets, he expressly saved and reserved the rights and privileges then by law belonging to any Baronet previously created.

Upon all these various grounds, then, Mr. Attorney and Mr. Solicitor-General, I submit for myself, and the Eldest Sons of all the Baronets of Scotland and Nova Scotia, that by law we have the right and privilege to ask and receive from the Queen the honour of Knighthood. I also submit that by law it is the personal prerogative of the reigning Sovereign to confer Knighthood on Baronets and on their Eldest Sons, being of age, provided they apply for the same, without the knowledge, concurrence, or interference of the Secretary of State for the time being, or any other Minister of the Crown. And further, I submit that it is the official duty of the Lord Chamberlain of the Royal Household to give knowledge to the Sovereign of such applications for Knighthood as may be preferred by Baronets, or their Eldest Sons, being of age, and afterwards to present the said applicants to the Sovereign for the honour in question. In calling upon you, therefore, as the legal advisers of the Queen, to report your opinion upon this Case to the effect prayed for in my Memorial, I must, at the same time, under all the circumstances, protest both in my own name, and in the name of the Scottish branch of the Order, against its being used as a precedent to the prejudice of any Baronet, or his Eldest Son, in any subsequent claim for Knighthood. In the royal ordinance of 1612, and the final decree of 1616, to which I have, in the course of this address, so frequently referred, it is covenanted between the Crown and the Baronets, that they, their wives, their sons, sons' wives, and daughters, shall each and every one of them, at all times, and for ever,

freely and quietly have, hold, and enjoy their several dignities, places, precedency, and privileges, and shall in all matters be ordered and adjudged concerning them as the other degrees of hereditary dignity are ordered and adjudged. Further, in the Royal Patents of King Charles the First, to the Baronets of Scotland and Nova Scotia, it is covenanted and declared, that when the Eldest Son of a Baronet, being of age, shall make application for Knighthood, he "shall receive that dignity *whensoever* he shall require it, free from any fees, or expenses whatsoever." By a series of irregular official references, and a course of unprecedented obstructions on the part of the late Secretary of State for the Home Department, I have now, for some years, been vexatiously prevented from enjoying a honour which is my birth-right—whilst, during that time I have been put to great personal trouble, inconveniences, and expense. With the view, therefore, of relieving all future applicants from the like usage, I call upon you, as the Law Officers of the Crown, to report, not only your opinion upon this claim, pursuant to the prayer of my Memorial, but at the same time, in addition, to advise the Secretary of State for the Home Department that it is the personal prerogative of the Sovereign to confer Knighthood on Baronets and their Eldest Sons irrespective of the interference or controul of the Government—and also that it is the official duty of the Lord Chamberlain on his receiving applications from Baronets, or their Eldest Sons, being of age, not to transmit them to the Secretary of State, or any other officer of the Crown, but to give immediate knowledge of the same to the Sovereign, and afterwards to present the applicants for the reception of that honour. The course taken by Lord John Russell in this matter, has, in my view of the case, been alike disrespectful to the Queen, to the Lord Chamberlain, and to the body to which I belong. If he has denied me, as a Baronet's Eldest Son, my natitial rights, he has also laid a veto on the exercise by Her Majesty of one of her royal prerogatives, and in one department of his official duties has superseded the functions of the Lord Chamberlain. But it is not because Lord John Russell's proceedings in this matter have been uncourteous, only that I complain—but because they have also been unconstitutional. I appear here not merely to maintain my family rights, and the privileges of the reigning Sovereign, and her Chamberlain, but to resist a violation of that which is above the Court, above the Government, and above the Crown, namely, the LAW OF THE REALM. Lord John Russell, in this case, has exercised an arbitrary power, and in the face of charters, acts, prescription, precedent, and usage, has attempted to annihilate rights which are a part and parcel of the constitutional properties and immunities of the subject. I deny, however, that the rights and privileges of the Baronets, and their Eldest Sons, are attachable at the pleasure of the Secretary of State for the time being. I deny that Lord John Russell, or any other Minister of the Crown, can in this, or in any other respect, make null and void the engagement of the Royal Founder of the Baronetage for himself, his Heirs, and his Successors. I recognize no right in the Government to do so.—I recognize none in either House of Parliament.—I do not recognize it even in the Crown itself. This engagement is THE LAW, which is paramount to them all. But there are higher influences bearing upon this question than any which arise out of considerations merely legal and constitutional, all powerful as these are. In the ancient Kingdom, and amongst the high minded people to which I belong, the laws of honour have ever been paramount to the laws of the Realm. And no reigning Sovereign of this Kingdom can break the royal WORD OF A PRINCE, which King Charles the First pledged to the Baronets for himself, and for all who should inherit his throne and sceptre, without doing that which in the subject would be regarded as a profligate and unprincipled departure from whatever is honourable, upright, and dignified in conduct. In asking you therefore, Mr. Attorney and Mr. Solicitor-General, to report on my claim in the terms submitted by me, I ask you to do so on grounds not merely personal to myself, or personal to the numerous and important section of the ancient nobility of Scotland whose interests I represent, but also on grounds *personal to the Sovereign*, and personal to all degrees and classes of the subject.

The question which is at issue between me and Lord John Russell, compromises our position as a nation and a name. It touches the honour and the respect, the political consideration, and the individual immunities, of each member of the State. It involves the integrity of those national rights which are the source of prosperity—the basis of security—the bond of government, and the condition of allegiance. Further, it affects the existence of all those sentiments and perceptions of national probity, and national virtue, without which there is neither law, or justice, or honour in the commonwealth. The rights and liberties for which the Barons of England of old contended when they said to King John, "NOLIMUS LEGES ANGLIÆ MUTARI," are not more valuable than those which attend the issue of the procedure taken by the Baronets of Scotland for the end "INTAMINATA FULGET HONORIBUS," since it involves immunities and privileges which neither the Crown, the Government, or the Legislature can abrogate or disallow except by a flagrant breach of Public Justice,—the disruption of a solemn social compact,—and the violation of all those moral, legal and constitutional ties, which for centuries have been alike reciprocally binding on the Sovereign and on the Subject.

I have to apologize Mr. Attorney and Solicitor-General, for the length of time which I have occupied,—but after the various proceedings taken in this case, and more especially in consideration of the fact, that the Govenment refused the Petition of the Baronets last year for a hearing of, and a judicial determination upon, their chartered right to claim and receive Knighthood, by the Queen in Council (a fact, under all the circumstances of the case, unparalleled I believe in the history of the legal transactions of the Kingdom), I am desirous if possible to obtain at your hands, without further discussion or delay, a final and satisfactory settlement of this question. I have therefore gone fully into the claim—I have produced every document which in my apprehension is necessary to enable you to understand its merits—and I trust I have exhibited in their proper light the anomalous obstructions which I have had to encounter. If however I have failed in any respect to substantiate my right—or if during the course of my address I have not succeeded in removing all doubts and difficulties from your mind respecting it, I am now ready and anxious to afford any further explanations that you may consider necessary. I cannot however conclude without observing that this Claim is one not only of no slight importance to the Scottish Baronets, but one also of no slight importance to the Scottish people, and as such I therefore desire to commend it to your most serious and deliberate legal consideration. Not because the Order can be committed by any finding on your part adverse to my rights, but because I am desirous to avoid if possible those extreme proceedings by which I feel morally certain that the engagements and acts of the Royal Founder of the Baronetage will be respected and made effectual. The extension of the Baronetage to Scotland was devised by King James the First, as stated in his Letter to the Lords of the Privy Council, not only that "those individuals e[illegible]ted into it in particular, but that the whole nation generally should thereby have honour and profit." The Lords of the Privy Council approved of it as an instance "of His Majesty's great affection towards his ancient Kingdom, and as an excellent means, both noble and fit, for advancing the good of the same." Its erection was unanimously sanctioned and ratified by the several Estates of Scotland in Parliament assembled, because they esteemed it "a purpose highly concerning His Majesty's honour, and the good and credit of his ancient Kingdom;" and on the same grounds, and from the desire which he himself felt that "the wished effects might follow by the continuance of so noble a design," King Charles the First was led to confer upon the Baronets of Scotland and Nova Scotia "the particular marks of his favour wherewith they were dignified, and to which he had ever been willing to add what further he conceived was necessary for testifying his respect for the Order."* On these public grounds then, I hold that it concerns not only the Baronets of Scotland

* King Charles the First's Letter to the Baronets of Scotland, 15th August, 1632.

and their families, but the whole Scottish Nation, that the Order should enjoy its privileges and rights. Since the removal of the Court from Scotland a variety of circumstances have conspired to impair the distinction of her ancient nobility both greater and lesser, and to depreciate their just and lawful position, not only at home but throughout Continental Europe. With the lowering of the upper ranks of the Scottish people, there has been however a corresponding declension from all those high and generous feelings which were the characteristic feature o" ıe public mind in times of old. The lessening of the national consequence has weakened the respect for national institutions, loosened the ties of national affection, and almost extinguished the love of national glory. That these things require redress is felt to be needed by every man of gentle blood in my native land who appreciates his natitial rights, or who has any veneration for constituted Orders. The Baronets of Scotland and Nova Scotia, of whom thirty-four have been raised to higher dignities, in antiquity of blood, in historical reminiscences, in name, influence, moral worth, and popular estimation, do not yield to any class or degree of their compatriots; and in re-claiming for myself, and for such of their Eldest Sons as choose to follow my example, honours and insignia associated with the most brilliant recollections of our ancient Monarchy —of which, by the grace and favour of a former Sovereign, we are the chartered and hereditary custodiars—I trust their revival will prove instrumental to the removal of that decay and dishonour which too long have rested upon all the chivalrous and the artistocratic institutions of the nation. The auspicious circumstance of a Female Reign is favourable to the .emedy of such abuses. Reformation is the distinguishing feature of the present age—and of late various classes of my fellow subjects have obtained an accession of new, or a restoration of old, popular rights. I cannot understand therefore why there should be the slightest indisposition in any quarter, to deny claims, or to discountenance proceedings, which tend to keep up a regular and graduated aristocracy—to preserve the purity of the monarchical principle of British Society—and to maintain the balance of our mixed and unequalled constitution. The dignity and privileges for which I contend, alike conspire to elevate the Subject—to uphold the due splendour of the State—and to add grace and lustre to the Crown. For the acquisition therefore of this right, if need require it, I shall bring to bear upon the constituted authorities the influence of all ranks and conditions of my Scottish fellow-subjects. The question which I have raised, and is now in dependance, involves issues which concern every liegeman of the Crown and Kingdom of Scotland, in matters not only of domestic consideration, but in questions which have not ceased to be of public importance in every other monarchical community in Christendom—and the Baronetage of Scotland and Nova Scotia never will be denuded of any of its chartered immunities and properties, so long as it enrols a single individual not lost to every sentiment of personal and family honour—or whilst there is a man left in our free and ancient Monarchy who venerates the memory of the House of Stuart—who feels for the common-weal and the aggrandizement of the Scottish Nation—or who is favourable to the supremacy of those sacred Public Laws, and the perpetuity of that exalted perception of private duty, which are equally compulsory on the prince and on the peasant, and alike form the palladium of the rights, the liberties, and the privileges of the highest, and of the lowest in the Realm.

R. BROUN.

W. Lake, Printer, 50, Old Bailey, London.